



United States District Court  
Southern District Of New York

Curtis McDaniel

Second  
Amended Complaint  
Case # 19-cv-03526

V

The People Of the  
City Of New York

## Defendant Information

Defendant 1:  
Gregory Welch  
Officer

Defendant 2:  
J. Quitty Shield #2751  
Detective

Defendant 3  
Daniel Howell  
Officer

Defendant 4  
Patrick Fanning  
Officer

Defendant 5  
Kenneth Fanning Faulker  
Officer

Defendant: 6  
Bobby Wilkins  
Officer

Defendant: 7  
Howard Leader  
lawyer  
11-11 park pl  
New York N.Y. 10007

Defendant: 8  
A.D.A. Rivet, C  
District Attorney Office  
of Manhattan

Defendant: 9  
Richard Tsai  
Hon. Judge

Defendant: 10  
A. Drysdale  
Hon Judge

Defendant: 11  
Ann D. Thompson  
Hon Judge

Defendant: 12  
Thomas William  
Officer

Malicious Prosecution > False Arrest >  
 Equal Protection Clause > Negligent  
 Investigation > Due Process > Slender >  
 Strip Search Invasion of privacy

The existence of probable cause is determined by the trial judge as a question of law. The Supreme Court of California held in Sheldon Appeal C.O. V. Albert and Olier if the facts are not in dispute, the issue of probable cause is a matter of law. If there is an issue of probable cause and all facts of the probable cause are not true probable cause is absent.

### Quality of Information Received

When the nature of the information received requires that a prudent person investigate further prior to commencing a criminal prosecution, there is a lack of probable cause. Thus, Florey V. District Court found that there was some doubt that there was a claimed break-in and rape involving the same

Complaining witness actually occurred

Probable Cause: Burden of Proof

Most courts hold that all warrantless arrests are presumed to be false and that the existence of probable cause is an affirmative defense to be pleaded and proved by the defendant. Plaintiff has burden of proof if arrest occurred in public place. But see *Noel v. King County*, 48 Wash. App. 227, 738 P.2d 642 (1987), interpreting Wash. Rev. Code §10.31.100

*Holmes v. Village of Hoffman Estates*, acquittal permitted a state claim for malicious prosecution. It is reasonable to demand that each charge [by an officer] be supported by probable cause [or] police officers would be free to tack a variety of baseless charges with no risk of being held accountable for the excess.

Probable cause to arrest exists if there is a sufficient quantum of fact to permit an officer to reasonably believe that it is more likely than not that a particular person committed an offense. These may be other facts known or readily apparent to the officer, however, which militate in favor of the person to be arrested. Arrest invalid when knowledge of exculpatory evidence directly negating element of offense known. But see *Jacks v. Tavernier*, 316 F.3d 128, 134-136 (2d Cir. 2003), applying New York law. This false arrest also lead to a violation of my equal protection clause discrimination on basis of sexual orientation or gender identity prosecution not absolutely immune for purported instructions to police not to accept or investigate plaintiff's claims on first amendment - "Class of one" equal protection claims based on differential treatment of private disputants - *Hogan v.*



County of Lewis 929 F. Supp. 2d  
130,148-150 (N.D.N.Y. 2013)

The charge of attempted assault in the third degree was facially insufficient because defendants alleged act of pushing an arresting officer away from him, without more, did not demonstrate an intent to injure or that defendants actions came completed assault. People V Chavez, 972 N.Y.S.2d 858, 41 Misc.3d 526, 2013 N.Y. Misc. Lexis 3582 (N.Y. City crim. Ct 2013) Attempt is action done with intent to commit some other crime and theory is that, although defendant may have failed in his purpose, his conduct is never the less culpable and if carried far enough cause sufficient risk of harm to be treated as crime itself. People V Bracey, 41 N.Y.2d 296, 392 N.Y.S.2d 412, 360 N.E.2d 1094, 1977 N.Y. Lexis 1839 (N.Y.), reh'g denied, 41 N.Y.2d 1010, 395 N.Y.S.2d 1027, 1977 N.Y. Lexis 3447 (N.Y. 1977)



Ordering arrest after police had declined may be outside scope of prosecutor's duties - *Grobono v. Koch*, 30 F. Supp. 2d 840, 842 - 843 (E.D. Pa. 1998)

*McGhee v. Pottawattamie County*, 547 F.3d 922, 929-931 (8th Cir. 2008), cert. granted, 556 U.S. 1181, 129 Ct. 2002, 173 L.Ed.2d 1083 (2009) and cert. dismissed, 558 U.S. 1103, 130 S.Ct. 1047, 175 L.Ed.2d 641 (2010) (931-932) Use of false information to file charges was not immunized. (932-933)

Due process is necessary where a recognized liberty interest is present. Receipt of notice, some kind of hearing, and a decision supported by at least some evidence, appears to be the minimum requirement. Although the Supreme Court's decision in *Albright v. Oliver* found that there was no substantive due process right to

be free from prosecution without probable cause, this badly fractured decision did little to clarify the nature of constitutional tort claims for malicious prosecution.

Strip searches of misdemeanants waiting on bail and arraignment absent of any belief that the plaintiff is dangerous and its discriminatory when males detainees under similar circumstances are not searched is a cause of action. My 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments were violated from this proceeding.

911 was called saying I was doing one thing as I was leaving I grabbed by Powells The victim to which I sepled got the fuck off me loud. I shook her hands off me then got hit a few times. I scream again get the fuck off me, pushing Powells off me on the floor. I then got up and left. I told my lawyer what happen that day as my family came and took my things out the house clothes, dog, t.v. games. 2 or 3 month later I was arrested in court on another case.

Claims Against A.D.A Rivet . C  
Howard Leader

Personal Involvement > Conspiracy >  
Negligent Investigation.

Howard Leader my lawyer was informed by me that I had a incident while he was representing me on a felony case. Because of an aggressive dispute between me and him over the felony case, he conspired with the A.D.A Rivet . C to arrest me on bad faith of prosecutorial discretion recklessly investigating. I was arrested at court months later after the incident by court officers and Howard signed off of my case at the same time. The A.D.A and my lawyer conspired the arrest in an attempt to have me remanded on a assault so I couldn't get out of jail and continue my defence, which I was work on diligently.

That felony case that they were trying to stop me from perfecting my defense on was later dismissed. This was a show on conflict of interest and outside the scope of the duty.

The bad faith exercised without the standards of proof in each element of each charge. Also the mere act of filing, or "swearing out," a criminal complaint is insufficient to establish the color of state law requirement. In an assault with no injury report, E.M.S. report, pictures, videos, or statements; furthermore the mental health, on site behavior patterns, and 911 call audio recording show no probable cause for my arrest/prosecution. *Stinnett v. Fallon County*, 2003 U.S. App. LEXIS 16095 (6<sup>th</sup> Cir. Aug. 5 2003). Prosecutors who allegedly intentionally fabricated false facts to create probable cause would be liable under *Devereaux v. Abney*, and omissions would also create liability. Qualified immunity

was denied immunized. (932-933)  
ordering arrest after police had  
declined may be outside scope of  
prosecutors Duties - *Owens v. Koch*,  
30 F. Supp. 2d 842-843 (E.D. Pa. 1998)  
*McGhee v. Pottawattamie County*,  
547 F.3d 922-931, 931 (8<sup>th</sup> Cir. 2008),  
cert granted, 556 U.S. 1181, 1295. Ct.  
2002, 473 L. Ed. 2d 1083 (2009) and cert.  
dismissed, 558 U.S. 1103, 130 S. Ct. 1047,  
175 L. Ed. 2d 641 (2010), applying Iowa law.  
If prosecutors were acting within the  
scope of their office or employment,  
the ITCA explicitly bars... Claims  
of false imprisonment and false  
arrest... but there was no decision  
whether alleged fabrication of  
evidence, perjury, and suppression  
of exculpatory evidence occurred  
during the investigative stage. A defam  
ation claim arising out of a press  
conference and press release  
was absolutely immunized. (931-932)  
But, use of false information to file  
charges was not immunized. (932-933)



Claim against Richard Tsai, A.  
Drysdate, Ann D. Thompson  
Color of law

Jurisdiction The Judges are not even appointed or elected by the State to reside over my criminal cases at all, Half of them are sitting permanently on a temporary seat while there is no reelection going on. This lead Judge to be able to violate the right on detainee primarily the 5<sup>th</sup>, 8<sup>th</sup>, 14<sup>th</sup> Amendment. Administrative judges only are allowed to receive information at court, not initiate arraignment, dismiss cases, or create motion orders and decision without the over seeing of their chief judge. My case never made it to a grand jury as evidents of courts inability to trial the case violating due process.



Richard Tsai initiated the proceeding by allowing prosecution with out proving all them elements of the crime to prosecute. He allowed the A.D.A to act with in neglect with out due process. Furthermore there was no grand jury proceeding with such a high bail in tack. The bail was high so to my in ability to pay violating my 8<sup>th</sup> Amendment.

A. Drysdale resided over my case allowing the A.D.A to proceed with prosecution with out information, fact of law, evidence, and no supporting disposition. Furthermore I was prosecuted out of my speedy trial statute of limitation, and 180.80.

Ann D. Thompson dismissed the case with out a chief judge over seeing the dismissal on facts of law.

## Abuse Of Process Claim Changing Decision > Impotence of bail

I was arrested at court for a misdemeanor, while waiting to see the judge about a felony case. I was given a new lawyer, prosecuted, and remanded with a high bail that should have been release on own recognizance.

There was a lot of glander and no discretion about information about my home life. The arrest, arraignment, and bail was an abuse of process for court to hold me in jail, stoping from finishing my perfect defense on another felony case # 2016-1302 indictment. Thus helping court get a higher success rate of conviction. The case was dismissed because it was unable to be tried by Speedy trial provisions.

My attorney was informed of the incident by me when I happen, then me in him had a few insulting conversatio 3 months later. Soon after he alerted the district attorney about the assault, then signed off my cases after being paid 20 k, having me arrested at my 06/21/18 Court date. The 32 precinct declined to arrest because the victim decided not to prosecute. My lawyer and the A.D.A assistant district attorney had Court officers arrested. *Orhono V. Koch*, 30 F. Supp. 2d 840, 842-843 E.D. Pa. 1998 Explains ordering arrest, after police had declined may be outside scope of prosecutors duties. I was arraigned and prosecuted for 3 month with out any information or supporting disposition/Statement from victim. There was also no grand jury and I wasn't allowed to speak in court and called a homosexual off court minvets.

## Charging Decision

The court will intervene albeit rarely if counsel can establish that his client is the victim of "selective" or "discriminatory" prosecution or is the target of prosecutorial "vindictiveness." As with other remedies for prosecution improprieties, the remedies discussed herein must be viewed in light of their fundamental limitation - judicial reluctance to utilize or enforce them. In *United States v. Stein*, 435 F. Supp. 2d 830 (S.D.N.Y. 2006), the district court granted the defendants motion to dismiss the indictment to the extent that the defendants' fifth and sixth Amendment.

## Due Process

Due process is necessary where a recognized liberty interest is present. Receipt of notice, some kind of hearing, and a decision supported

by at least some evidence appears to the minimum requirement. Although the Supreme Court's decision in *Albright v. Oliver* 1103, 130 S.Ct. 1047, 175 L.Ed.2d 641 (2010) applying Iowa law. If prosecutors were acting within the scope of their office or employment, the ITCA explicitly bars... Claims of false imprisonment and false arrest... but there was no decision whether alleged fabrication of evidence, perjury, and suppression of exculpatory evidence occurred during the investigative stage. The use of false information to file charges is not immunized. (932-933) To use false information to file charges is just as bad as having no information to file charges.

Bail

My bail was excessive to restrict me from perfecting my perfect defense on a felony case



That has nothing to do with the misdemeanor case, by remanding trying to impose a high bail I can not pay on one case, and trying to raise my \$0k bail on the felony case due to the new arrest. Furthermore this would give court a high success rate of conviction, because most remand detainees except plea bargains to get out or can properly defend themselves by paying lawyers and working ect. In which case I lost my paid lawyer the day of the arrest.

Speedy trial

My case could be tried at all so it was dismiss due to speedy trial provision. There was no information at all state ment, pictures of injuries, video and all. Only there was audio proving my innocents in defending myself with a push to get her off me heard "Get the fuck off me" I screamed during the 911 call.

## Excessive Force Claim

I was assaulted by Emergency Service Unit while I was in a holding pen with out being read miranda rights or being told what I was arrested for. 5 E.S.U. officers open the pen with a shield and a stun gun, and they shot me in the chest after a shield rush and I fell to the ground. As I fell I had hit my head hard on the ground and starting having an asthma attack. I was then being punched and kneed in the head and body while being rolled on my stomach and cuff still being hit, untill I was picked up and place on a metal chain sheet and rolled up in it. I was taken to to hospital on my stomach in the metal sheet chain having an asthma attack.



## Degrees of force

A blow to the head is considered deadly force, and a blow to the knee/arm is considered non deadly force. I hit my head on the ground while I was being tasered. Then I was punch multiple time in the head and body while a knee was placed on my throat.

## Policy on degrees of force and detention

An unviolated detainee should be controlled by order, grabs, and nonlethal methods. There is a duty to make sure the detainee survives and not put to cruel and unusual punishment. Also one cuffed detainee shouldn't still receive multiple injuries. Not once did attempt to fight violate or bring cause for any bodily harm or excessive force.

It is <sup>9</sup> pain, not injury, that is the touchstone of the Eighth Amendment Excessive Force and Beating and kneeling in back of shackled and defenseless prisoner aggravating medical condition was reprehensible "Malicious Desire to cause Harm" Hendrickson v. Cooper, 589 F.3d 887, 891, 894 (9th Cir 2009) A \$75,000 pain and suffering compensatory damages award and punitives of 125,000 were upheld

My 8th Amendment was violated under cruel and unusual punishment for the unwarranted assault/batter by emergency service unit

## Fair trial Claim.

My case couldn't be tried meaning court had jurisdiction / knowledge to try a case. There was no information or supporting disposition, actually there was no grand jury or evidence at all. The case was at arraignment for 3 months out side of misdemeanor speedy trial statute of limitations. The statute of limitations is 3 months under 30.30(2)(A). There was nothing done at arraignment so there is no excludable time for the people.

My 6<sup>th</sup> Amendment was violated because I was not given the right to a speedy trial.

False Imprisonment > Imposition  
of bail claim

I was arrested on 06/21/20 out of court, officers asked me my name to which I told them. I was then grabbed and pushed out of court forcefully and arrested. I did not consent to the arrest so I was pushed in the hold pen while I asked why I'm being arrested. This case was a matter of false arrest because investigating officers, decline the arrest because the victim had clear cut mental health issues, attacked me, and didn't wish to press charges. The district Attorney and my defense attorney acted out of scope of duties. I was imprisoned for 4 days and the case couldn't be tried and was dismissed do to 30.30 speedy trial motion.

I was issue a high bail based on that my 8<sup>th</sup> Amendment was violated, and the high bail was based

on a case with no evidence or information, with a variety of baseless charges. Each and every element of the charges weren't proven. This was to increase bail on a misdemeanor in which I should have been ROR on. The bail produced hardship to pay because I was already on a 50k bail on another case and I had just finished paying my lawyer 20k, then he signed off the case. Also during my imprisonment my dog suffered starvation with no one home to feed and walk her. Peterson V. County of Nassau, 995 F. Supp. 305, 315-324 (E.D.N.Y. 1998) applying New York law. A \$160,000 damages award to each plaintiff was excessive and a remittitur to \$15,000 was ordered where detention was short, no formal charges were brought, no physical injury occurred, and police were not overbearing. The case contains a detailed analysis of relevant New York damages awards. (My 4<sup>th</sup> Amendment was violated)



## Damages

I'm filing suit for compensatory, general, special, and punitive damages in the amount of 1,200,000. These claims: Malicious Prosecution, Abuse of process, False Arrest, False imprisonment, Fair trial, Impotence of bail, Medical delay, Conspiracy, illegal searches/~~the~~ illegal amount of strip searches, and unfit holding pen conditions. Further more I'm asking for amout do to malicious conduct, mental anguish/emotional distress, treatment, physical harm loss of employment/wages, loss of enjoyment, shock, slander/reputation, legal fees, incarceration fee, surcharges, loss of house hold/possession harm to my animal, and emotional shock to my family from hearing me doing 4 days of a transgender. More over the fact that the Judges acted out of the officials

duties and capacity sitting permanently on a temporary seat and not even having jurisdiction by being/havent been appointed or elected by secretary of the state to reside over criminal cases. The judge, district attorney, and officers violated my 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup>, 8<sup>th</sup> amendment. Further more many injuries including economic and non-economic are seen; loss of opportunity, inconvenience, transportation, loss of wages, family presence at court, humiliation, discrimination due to gender, strip search, mental anguish, emotional distress, pain and suffering, and clear cut disregard for my rights.



McDaniel, Cuff's  
BARE HILL CORRECTIONAL FACILITY  
CALLER BOX 20, 181 BRAND ROAD  
MALONE, NEW YORK 12953

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Pro Se Intake Unit  
500 Pearl Street  
New York, N.Y. 10007